

# **THE CONTRACTORS' STATE LICENSE BOARD**

## **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REPORT TO THE CALIFORNIA LEGISLATURE**

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**Board Overview, Issues, Findings  
and Recommendations**

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**Prepared by:  
Joint Legislative Sunset Review Committee**

**APRIL, 1997**

# **JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE**

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# 1.

## OVERVIEW OF THE CURRENT REGULATORY PROGRAM

### BACKGROUND AND DESCRIPTION OF THE BOARD

The Legislature established a Contractors License Bureau in 1929, under the then Department of Professional and Vocational Standards. In 1935, the mission and duties of the agency were placed under the auspices of a 7-member Board. From 1960 through 1975 the Board was increased to 13-members.

The Board is presently composed of 13-members. It is a public majority with 7-public members and 6-professional members. Eleven members of the Board are appointed by the Governor, while one public member is appointed by the Assembly Speaker and the other appointed by the Senate Rules Committee. The composition is as follows:

- One member shall be a general engineering contractor.
- Two members shall be general building contractors.
- Two members shall be specialty contractors.
- One member shall represent a building trades labor organization.
- Seven members shall represent the public, one of whom shall be an active, local building official.

The legal and regulatory role of the Board has had some major changes over the years since the Board's creation. Initially, applicants were not issued specific license classifications. Instead, applicants simply indicated the type of construction work that would be performed under the license, and the license was issued without any examination or experience requirements.

In 1938, the Legislature made it mandatory that applicants for contractors licenses be examined for competence in their designated vocational fields. By 1947, the Board had authority to establish experience standards and to adopt rules and regulations to effect the classification of contractors *“in a manner consistent with established usage and procedure as found in the construction business, and. . . limit[ing] the field and scope of operations of a licensed contractor to those in which he or she is classified and qualified to engage. . .”*

The Board licenses and regulates 44 license classifications and two certifications under which members of the construction industry practice their trade or craft. The Board also registers persons engaged in the sale of home improvement goods and services.

For purposes of classification, there are three basic branches of contracting business defined by statute, and by the rules and regulations of the Board. They are:

- (a) General engineering contracting (Class “A”).
- (b) General building contracting (Class “B”).
- (c) Specialty contracting (Class “C”).

## LICENSING DATA

There are approximately 277,000 contractors licensed with the Board. The following provides licensing data for the past four years:

LICENSING DATA	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
<b>Total Licensees</b>	Total: <b>278,631</b>	Total: <b>278,329</b>	Total: <b>279,103</b>	Total: <b>276,583</b>
Active	214,786	210,650	206,844	205,250
Inactive	63,845	67,679	72,259	71,333
<b>Applicants</b>	Total: <b>34,442</b>	Total: <b>31,634</b>	Total: <b>26,911</b>	Total: <b>26,503</b>
Exams	17,813	16,379	13,392	13,878
Waiver of Exam	8,914	8,254	7,639	7,267
Add Classification/Change Qualifier	7,715	7,001	5,880	5,358
<b>Applications Denied</b>	Total: <b>381</b>	Total: <b>379</b>	Total: <b>442</b>	Total: <b>372</b>
<b>Licenses Issued</b>	Total: <b>24,993</b>	Total: <b>19,659</b>	Total: <b>18,779</b>	Total: <b>16,919</b>
General Engineering Contractor	1,426	1,265	1,232	1,127
General Building Contractor	10,197	7,616	7,827	6,916
Specialty Contractors	15,980	11,678	11,522	10,682
<b>Renewals Issued</b>	Total: <b>134,094</b>	Total: <b>105,966</b>	Total: <b>125,192</b>	Total: <b>111,550</b>
<b>Statement of Issues Filed</b>	Total: <b>47</b>	Total: <b>29</b>	Total: <b>31</b>	Total: <b>44</b>
<b>Statement of Issues Withdrawn</b>	Total: <b>27</b>	Total: <b>19</b>	Total: <b>28</b>	Total: <b>30</b>
<b>Licenses Denied</b>	Total: <b>27</b>	Total: <b>19</b>	Total: <b>24</b>	Total: <b>18</b>
<b>Licenses Granted</b>	Total: <b>4</b>	Total: <b>3</b>	Total: <b>1</b>	Total: <b>3</b>

## BUDGET AND STAFF

The main sources of revenue for the Board are generated from application, license and renewal fees. Anticipated revenues for FY 1996/97 are about \$43.2 million. The Board's projected expenditures are about \$40.1 million. As of June 30, 1997, the Board expects a reserve of about \$19.0 million, or 43% of its total budget. (Almost 5.7 months of reserve.) The Board's renewal and original application licensing fees were increased effective January 1994. Prior to that date, fees had not been increased since 1982.

For FY 1995/96, the Board spent \$6.6 million on administration (including testing and information systems), 17% of its total budget; \$7.4 million on licensing, or 19% of its total budget; and, \$24.6 million on enforcement, or 64% of its budget. Other boards spend on average about 7% of their budget on examinations and 66% on enforcement.

The Board had a staff of 475 authorized positions for FY 1995/96. The enforcement unit of the Board had 261 authorized positions. Most are Deputy Registrars I, II and III (146), Consumer Service Reps (28), and Office Techs. and Assts. (65).

## FEES

The Board's license is good for two (2) years. The Board's current fee structure is as follows:

Fee Schedule	Current Fee
Application/Exam Fee	\$250
Initial Licensee Fee	\$150
Application Fee (No Exam)	\$400
Additional Classification	\$50
Renewal Fee (Active Licensee)	\$300
Renewal Fee (Inactive - 4 Years)	\$150
Delinquency Fees	\$25
Re-Exam	\$50
Home Improvement Sales Registration	\$50
Asbestos/Hazardous Substance Certification	\$50

## LICENSING REQUIREMENTS

All businesses or individuals who construct, offer to construct, or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the Board, if the total cost (labor and materials) of one or more contracts on the project is \$300 or more. Contractors, including subcontractors, specialty contractors, and persons engaged in the business of home improvement must be licensed before submitting bids. Licenses may be issued to individuals, partnerships, corporations or joint ventures.

The definition of contractor, and the work performed by a contractor, is very broad. There are few who are exempt from licensure if involved in any of the above activities. The following would be considered as exempt from the requirements of licensure:

- An employee who is paid wages.
- Public personnel working on public works.
- Public utilities working under specified conditions.
- Oil and gas operations performed by an owner or lessee.
- Owner-builders who are usually improving structures on their own property. However, they cannot sell the structure within one year after improvements and cannot do more than two structures within three years
- Sale or installation of products which do not become a fixed part of the structure.
- Security alarm company operators and those who install satellite antenna systems. (They are regulated by other agencies.)
- Architects, engineers, geologists, structural pest control operators.

To receive a license, the candidate for licensure must have at least four years of qualifying journey level work experience and pass an exam in the area of classification. (They must also pass a “*Law and Business*” examination, and complete the “*Asbestos: A Contractor’s Guide and Open Book Examination.*”) Technical training, completion of an approved apprenticeship program, or related college or university education can substitute for a portion of the work experience requirement. The candidate must also be 18 years of age, have more than \$2,500 in operating capital, submit a contractor’s bond or cash deposit in the amount of \$7500, and proof of worker’s compensation, or sign an exemption (e.g., sole owner of business).

Previous education and experience may be used to waive the requirement for taking the trade examination, under specified circumstances.

In general, the Board does not recognize contractors' licenses issued by other states. However, the Board may enter into reciprocal agreements with other states to waive the trade examination for the particular area of classification. The Board currently has reciprocal agreements with Arizona, Nevada, and Utah.

Examinations are administered on a daily basis at eight testing centers throughout the State by means of a computerized system called, "Computer Administered Testing" (CAT). There are 46 trade examinations provided for all classifications.

The passage rates for most of the exams is usually high. For the past four years, the average passage rate for general engineering contractors and general building contractors was about 80%. For most specialty exams the passage rate is about 60% to 70%. However, most pass rates for specialty exams have been declining since 1992/93. This may be primarily due to the criticism made by the Legislature in 1993, that exams were too easy to pass. There are several exams which now have a passage rate of between 20% to 40%. These include drywall, earthwork, lathing, masonry, parking & highway, pipeline, and reinforced steel.

## **CONTINUING EDUCATION/COMPETENCY REQUIREMENTS**

There is no requirement that contractors participate in continuing education as a condition for license renewal. However, the Board recently studied this issue in 1995. After public hearings were held throughout the State, a Board appointed task force concluded that attempts to regulate the construction industry through industry-wide continuing education mandates would be inappropriate, especially in view of the fact that there are no education requirements for initial licensure.

The Board adopted the following task force recommendations: (1) expansion of the Board's quarterly newsletter to include educational articles; (2) work with the appropriate professional association to identify and publicize course work related to seismic retrofitting of buildings; and, (3) require licensees to take continuing education as a part of a disciplinary action. Currently, the Board has the authority to impose this requirement.



## ENFORCEMENT ACTIVITY

ENFORCEMENT DATA	FY 1992/93	FY 1993/94	FY 1994/95	FY1995/96
<b>Inquiries</b>	Total:	Total:	Total:	Total:
Telephone and Walk-In	<b>2,031,747</b>	<b>2,009,448</b>	<b>1,957,716</b>	<b>1,788,249</b>
<b>Complaints Filed (By Source)</b>	Total: <b>31,534</b>	Total: <b>29,475</b>	Total: <b>31,154</b>	Total: <b>30,806</b>
Public	23,050	20,759	22,060	21,960
Trade/Profession	3,646	2,780	2,471	2,274
State/Local Agencies	666	307	134	127
Initiated by Board	4,172	5,501	6,489	6,445
<b>Complaints Filed (By Type)</b>	Total: <b>31,999</b>	Total: <b>29,210</b>	Total: <b>30,765</b>	Total: <b>32,856</b>
Workmanship/Abandonment	10,640	9,934	9,696	10,921
Non-licensee	8,819	8,426	8,711	8,661
Other (Contract Disputes, etc.)	12,540	11,390	12,358	13,274
<b>Complaints Dismissed</b>	Total: <b>17,965</b>	Total: <b>14,412</b>	Total: <b>14,527</b>	Total: <b>15,362</b>
<b>Investigations Opened</b>	Total: <b>15,644</b>	Total: <b>16,185</b>	Total: <b>18,959</b>	Total: <b>17,759</b>
<b>Citations and/or Fines</b>	Total: <b>2,879</b>	Total: <b>3,366</b>	Total: <b>3,812</b>	Total: <b>4,076</b>
Licensees	1,262	1,738	1,944	1,820
(Amount Assessed)	(\$590,605)	(\$878,446)	(\$1,136,370)	(\$1,391,141)
(Collected)	(\$196,773)	(\$286,894)	(\$331,815)	(\$162,527)
Non-Licensees	1,617	1,628	1,868	2,256
(Amount Assessed)	(\$1,300,700)	(\$1,543,759)	(\$2,004,433)	(\$2,533,172)
(Collected)	(\$253,036)	(\$310,850)	(\$336,897)	(\$138,340)
Suspensions (Non-Compliance)	876	825	938	994
Revocations (Non-Compliance)	356	597	816	733
<b>Other Compliance Actions</b>	Total: <b>3,748</b>	Total: <b>4,173</b>	Total: <b>4,803</b>	Total: <b>5,367</b>
Warning Letters	1,908	2,057	1,965	2,094
Cease & Desist	1,617	1,628	1,868	2,156
Arbitration	223	488	970	1,117
Suspensions (Non-Compliance)	93	68	154	196
Revocations(Non-Compliance)*	211	50	32	68
<b>Disciplinary Actions**</b>	Total: <b>242</b>	Total: <b>212</b>	Total: <b>150</b>	Total: <b>194</b>
Accusations Filed***	286	235	223	356
Withdrawn/Dismissed	69	51	32	32
License Revocation	173	170	119	148
License Suspension	10	14	5	9
Probation	59	28	26	37
Criminal or Civil Filed	94	16	61	121
Unlicensed Activity	540	623	740	724

\*The number of Arbitration Revocations for non-compliance (non-payment of award) are carried over from the prior year Suspensions.

\*\*The total number of "Disciplinary Actions" are those in which either license revocation, suspension or probation occurred.

\*\*\*The largest number of accusations filed pertain to contract violations, especially in the area of home improvements.

## COMPLAINT DISCLOSURE POLICY

The Board provides a toll free 800 telephone number for the public, so they can check on the contractor's license status, whether or not it's in "good standing," and obtain general license information concerning the contractor. A listing of past and pending legal actions against the licensee is also made available.

A "pending legal action" will only be reported when a complaint has been substantiated by investigative staff, and legal action has been requested. (Only a small percentage of complaints are referred for legal action to the Attorney General.) There are some Boards which will supply the number of pending complaints against a licensee while an investigation is in process. However, they will not disclose the nature of the complaints.

"Past legal actions" would include citations previously issued against the licensee, any disciplinary action in which probation, suspension or revocation has occurred, and most cases in which automatic suspension of the license was found necessary.

Information concerning an arbitration decision is not made available to the public, unless the licensee fails to comply with the arbitration award. This would result in suspension of the license for one year and automatic revocation of the license if, after a year, the licensee does not comply with the award. The Board will report those civil judgments in which the contractor is pending suspension, or suspended for noncompliance. However, there is not a mechanism for the Board to track, or receive reporting data, on any civil or criminal judgments against the licensee unless reported by the licensed individual or a plaintiff to a court action.

## COST RECOVERY AND RESTITUTION TO CONSUMERS

Pursuant to Section 125.3 of the B&P Code, the Board may request the administrative law judge (ALJ) to direct a licensee, who is found to have committed a violation(s) of the licensing act, to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

COST RECOVERY	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
Requested	0	\$77,804	\$47,767	\$544,115
Ordered	0	\$65,572	\$34,487	\$110,837
Received	\$64,991	\$173	\$50,204	\$29,533

Restitution is made to the consumer under the following circumstances:

- When a complaint is filed, and during the mediation process of an investigation, the licensee and complainant may agree to a form of restitution such as finishing the job, correcting the poor workmanship, or paying the costs to complainant to complete or correct the job.
- If arbitration is agreed to, then restitution may be ordered where the consumer prevails.
- If a citation is issued, and/or a fine imposed, the licensee may be ordered to correct the work or pay the costs to the consumer.
- If an accusation is filed, there may be a stipulation or decision that requires restitution to the consumer.
- If financial injury is caused by an unlicensed person, the person's name is "flagged" by the Board. Any attempt to become licensed will require restitution.
- If there is a construction related civil judgment against the licensee, they must pay the judgment or post a bond in the amount of the judgment.

The following provides restitution dollar amounts which the Board claims they have been able to assist the public in collecting from licensed contractors, for the past four years:

RESTITUTION	FY 1992/93	FY 1993/94	FY 1994/95	FY 1995/96
Ordered/Collected	Total: <b>N/A</b>	Total: <b>\$10,174,888</b>	Total: <b>17,092,766</b>	Total: <b>\$24,575,206</b>
Accusation		N/A	N/A	\$164,820
Citation		N/A	N/A	\$373,016
Arbitration		N/A	N/A	\$1,489,973
Mediation		N/A	N/A	\$11,435,717
Civil Judgments		N/A	N/A	\$11,111,680

## CONSUMER OUTREACH AND EDUCATION

The Board has recently embarked on a proactive consumer outreach and education program to educate the public on how to hire reliable contractors, and file complaints against unreliable ones.

In 1995, the Board launched a public awareness campaign entitled, “*Get Smart. Get a Licensed Contractor.*” The Board began to routinely invite television, newspaper, and radio to cover stings and sweeps. It also began utilizing the Internet to provide license status information.

In 1996, it initiated a statewide speaker’s bureau and sent mailings to more than 100 consumer groups and senior citizen groups. It also solicited support for obtaining display booth space to provide important publications, such as the “*What You Should Know*” about hiring a contractor, and “*A Consumer Guide to Filing Complaints.*”

In June 1996, the Board adopted a Disaster Communication Plan to maximize communication with consumers during disasters, and to ensure regular publicity.

## 2.

### IDENTIFIED ISSUES AND FINAL RECOMMENDATIONS OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

#### ISSUE #1. Should the Board continue to license and regulate contractors?

**Recommendation:** *The State of California should continue to regulate and license construction contracting, but limited to situations where true consumer risk is involved.*

**Comment:** In the absence of regulation, there is a substantial risk of harm, both financial or physical injury, which could result due to the poor workmanship of a contractor, the failure to follow plans and specifications, unresolved contractual disputes, or abandonment of construction projects. A majority of the complaints and cases handled by the Board involve these types of injuries. Residential construction generates the most complaints, with most cases involving violations of the Home Improvement Laws. The need to regulate contractors is also demonstrated by the amount of monetary damages involved in cases of restitution, civil judgments, or arbitration (over \$61 million in the past three years). There are about 25 other states which regulate contractors involved in residential and commercial projects. Other states regulate only a specific area, such as plumbing, electrical or home improvements. There are three notable states, New York, Illinois and Missouri, which rely on local cities and municipalities to regulate the work of contractors.

State regulation and licensing of certain contractors may not be needed in all areas currently subject to the Board's jurisdiction if it can be determined, for example, that there is no consumer risk involved. The Board is currently in the process of reviewing all specialty licensing classifications, of which there are 42, to determine if some could be eliminated, consolidated or redefined. The Board expects to submit a progress report to the Joint Committee and the Administration sometime this year and then pursue regulatory changes to these specialty classifications the following year.

**ISSUE #2. Which “specialty licensing contractor classifications” should be consolidated, redefined or eliminated?**

**Recommendation:**

*Defer comment on consolidation of the current forty-two contractor classifications, pending the Board’s final report on the subject. The Committee is not supportive of license classifications absent compelling findings that classification protects consumers. A final report on the consolidation, redefinition, or elimination of specialty licensing contractor classifications shall be made to the Department and the Joint Committee by October 1, 1998.*

**Comment:** As indicated, not all contractor specialty classifications have the potential for substantial risk of harm to the public. There are some classifications for which there have been few if any complaints, and very few licensed in those specialty areas. The Governor recently acknowledged this fact in a recent veto message. He stated in part: *“Not all of the current 42 specialty classifications which require special licensure are in the best interest of the building industry or the public. Requiring additional years of experience, testing and delay for individuals in trades where there is no consumer risk limits work options for general contractors, drives prices up to consumers and is simply anti-business and anti-competitive.”*

The Governor directed the Board to submit a legislative proposal in January, which includes only specialty classes which would pose health or safety risks to consumers. The Board indicated, that in January of 1996, it established a task force, the Classification Review and Regulation Reduction Task Force, to review the entire classification system. However, the work of this Task Force has just began. The Joint Committee does not expect to receive a final report on this matter until August or September of 1998.

**ISSUE #3.** Should there be a separate license classification for home improvement contractors, and should registration of home improvement salespersons be eliminated?

**Recommendation:** *The Joint Committee supports the concept of certification for contractors who perform home improvement work. However, before any final recommendations are made, the Committee will need additional input and recommendations from industry and the Board concerning certification and the elimination of any corresponding existing specialty certifications. Suggest the Board hold a public hearing to discuss this issue with the construction industry and the public, and report back to the Department and the Joint Committee by October 1, 1998. The Joint Committee also supports the elimination of registration for home improvement salespersons.*

**Comment:** The Board is proposing a regulatory focus on the home improvement segment of the construction industry by requiring the certification of all prime and subcontractors who contract for the performance of home improvement work. The requirements for the Home Improvement Certification would include an open book exam and continuing education course work related to the business and legal aspects of the home improvement industry. A \$250,000 blanket performance bond could be posted in lieu of the exam and continuing education requirement.

The impact of this certification program on the construction industry is unknown at this time. Both the industry and the public should be provided with an opportunity to discuss this issue with the Board.

**ISSUE #4.** Should the Board continue to certify and regulate asbestos contractors, or those involved in the removal or remedial action of hazardous substances?

**Recommendation:** *The issue of whether asbestos contractors should be regulated by the Board should also be addressed as part of the specialty classification review being performed by the Board.*

**Comment:** It is not clear whether the Contractors' Board has the expertise or ability to investigate, or take action against contractors for asbestos related violations of the Labor Code, or take action against contractors for violation of the Health & Safety Code pertaining to the removal of hazardous substances. The Board should consider requesting legislative authority to transfer regulation of these contractors to the Division of Occupational Safety and Health (Cal-OSHA), which generally regulates asbestos related work, and the Department of Toxic Substances Control which regulates hazardous substance related work.

**ISSUE #5.** Should the Contractors' State License Board be continued as an independent board, or should its operation and functions be assumed by the Department of Consumer Affairs?

**Recommendation:** *The Contractor's State License Board should continue as the agency responsible for regulation of the practice of contracting. As such, legislation should be enacted to continue the Board and require a subsequent sunset review. However, the sunset date for this Board should only be extended for two years, to July 1, 2000, because of major unresolved issues dealing with the regulatory authority of this Board. The review of this Board should only be limited to those unresolved issues as identified by the Joint Committee.*

**Comment:** In the Fall of 1993, the Assembly Consumer Protection Committee held two hearings on how the Board handled many of its most important functions, such as screening contractor license applications, responding to consumer complaints, and revoking licenses when warranted. The Committee released a report in which it charged that the Board had been "critically deficient" in protecting consumers from unscrupulous or unqualified contractors. The Committee directed the Board to make immediate and long-term changes to address these problem areas.

There are steps which the Board has taken over the past three years to deal with some of these problem areas. However, since there are still major unresolved issues involving the regulatory powers of this Board, future legislation to address these issues should be tied to the sunset date of this Board. A sunset date of July 1, 2000, would provide sufficient time for the Board, Department and Joint Committee staff to review all outstanding issues and provide Joint Committee members with recommendations by October 1, 1998. Legislation could then be introduced in 1999 to implement the necessary changes and reinstate the Board.



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**ISSUE #6. Should the composition of the Board be changed?**

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**Recommendation:** *No change.*

**Comment:** The Board has 13 total members: 7 public and 6 professional. DCA generally recommends a public member majority and an odd number of members for regulatory boards. This board's current composition is balanced along those guidelines.

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**ISSUE #7. Should a General Building Contractor be limited to contracting when only three or more unrelated specialty trades are involved?**

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**Recommendation:** *Should await the outcome of the Board's classification review, before attempting to resolve whether General Contractors should be limited to contracting when only three or more unrelated specialty trades are involved. Pending such action, the Governor's counsel (in veto message related to AB1455 (1996)) is most appropriate: General Contractors are called upon to do "business in a responsible manner without delving into areas which do not require specific skill or training and which may result in potential public risk."*

**Comment:** AB 1455 was introduced by the Board in response to a court decision, *Home Depot U.S.A., Inc. v. Contractors State License Board*. In this case, the court held that the Board could not restrict a general contractor to only performing work comprising more than 3 unrelated building trade or crafts (excluding carpentry), unless they had a specialty license. The Board sought to clarify this issue by introducing AB 1455. The Governor vetoed AB 1455, and stated that the Board should first determine what specialty trades pose health or safety risks to consumers. This would allow general contractors to perform work in other current specialty classifications without the need for a license, as long as there is a showing that no consumer risk is involved.

Currently, a general contractor can now perform work in any specialty area, since there are no restrictions, even if its in an area which the general contractor has no experience or skill. In the meantime, the Governor has called up the building industry to act in a "responsible manner" and not do work in which they lack the necessary skills or training.

**ISSUE #8.** Should an independent analysis be conducted on the examinations required by the Board to obtain a contractor's license, and to determine when a waiver of the examination requirement may be appropriate?

**Recommendation:** *The Board should contract with an independent exam expert to: 1) conduct an occupational analysis of the questioned exams in order to assure that they are appropriately testing job-related skills; and, 2) determine if the categories of exam waiver assure that the applicant has the requisite skills for licensure. The Board should also have its examinations evaluated and validated by the Department's Office of Examination Resources. The occupational analysis and review of these exams should be initiated as soon as possible.*

**Comment:** One of the criticisms made in 1993 by the Assembly Consumer Protection Committee, was that the passing rates of the contractors examinations for general contractors, and many of the specialty trades, were too high, allowing for incompetent contractors to practice. The Board raised the passing scores for several of its examinations. However, some passage rates are still relatively high for contracting specialties which have a higher percentage of applicants. For example, the average passing rate for general contractors has been at 81% for the past four years. About 7,400 applicants took this exam in 1995/96. The passage rate for general engineering contracting also has an average passage rate of 81% for the past four years. (About 1000 applicants took this exam in 1995/96.) The electrical exam was 86%, and the plumbing exam was 77%. An occupational analysis of each of these exams, or others with high passage rates, will assure that the examination is testing for the appropriate skills, knowledge and abilities needed to practice within each of the contracting trades.

**ISSUE #9.** Should the Board shorten the time frame for processing of complaints and the completion of investigations?

**Recommendation:** *The Board should provide recommendations to the Joint Committee by October 1, 1998, on ways in which the processing time of complaints and the completion of investigations could be shortened.*

**Comment:** The Board has made significant efforts in attempting to shorten the time frame for the handling of complaints and investigations. About 60% of complainants surveyed by the Board believe that their cases were processed in a timely fashion. However, the standard time frame for the handling of complaints is still six months, and a substantial number of investigations take from one to two years to complete before any legal action is taken. The Board should attempt to reengineer this process to at least shorten the time frame for investigations.

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**ISSUE #10.** Should there be more of a cooperative effort between the Board and local building officials to improve on reporting of violations of the Contractor's Act.

**Recommendation:** *The Board should implement a program to work more closely with local building officials and the State Buildings Standards Commission to provide ongoing training and information to building officials concerning potential violations of the Contractor's Act.*

**Comment:** Few violations are reported from local building officials. In 1995/96, only about 127 complaints were reported to the Board from state or local agencies out of a total of over 30,000 filed for the year. Building officials possibly have the best opportunity to report what could be considered as incompetent contractors, and those who may violate specific provisions of the Contractor's Act. In many instances, however, building officials are not aware of laws pertaining to contractors, and the consistent application of building codes from one jurisdiction to the next. The Architect's Board has a "Building Official Contact Program" to ensure building officials awareness of and compliance with state statutes mandated by the Architects Practice Act. The Board should attempt to establish a similar program.

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**ISSUE #11.** Should the State consider other alternatives to providing restitution to the consumer, such as requiring performance bonds, or establishing an insurance or recovery fund?

**Recommendation:** *The Department, the Board and Joint Committee staff should review this issue and make recommendations to the members of the Joint Committee by October 1, 1998.*

**Comment:** When a contractor goes out of business, abandons a construction project, fails to perform on the contract, does not follow plans or specifications, or is involved in poor workmanship, the extent of meaningful consumer protection can be woefully lacking. Frequently, the homeowner's only recourse is to sue in small claims court or file a civil action against the contractor. The homeowner can also attempt to collect on the \$7500 surety bond required for all contractors, however, only a very small portion of overall damage claims made by consumers are ever paid out. (For 1994/95, total pay out was about \$5 million. This is in stark contrast to the estimated contract value for complaints filed with the Board of between \$60 million and \$100 million annually.) The potential dollar amount for injury beyond the complaint amount is also considerable, but difficult to estimate.

To date, there are about 15 states which have some form of recovery fund. The Board has been struggling with this issue, and discussed the possibility of establishing a recovery fund, and/or requiring payment and performance bonds in the area of home improvement projects over a certain dollar amount. However, a recent proposal made to Board to raise the level of the license bond to \$25,000, for those involved in home improvement work, and \$15,000 for all others, failed to obtain the support of the full Board.

Clearly, this issue should be discussed further. Surety bonds do not provide protection to consumers. It is extremely difficult to collect on surety bonds and they are primarily used to provide some assurance of performance, not as a means to provide restitution to an aggrieved consumer.

**ISSUE #12. Should the Board warn the consumer about its inability to obtain current information about civil or criminal judgments when asked about the current license status of the contractor?**

**Recommendation:**

*No recommendation necessary. The Board has begun to warn the consumer that "the available information may not reflect. . .any civil or criminal judgments or actions that have not been reported to the Contractors' Board."*

**Comment:** The consumer can receive information concerning the license status of the contractor, and whether or not it's in "good standing," by calling the Board or through the internet. Both pending and past legal actions are reported to the consumer. However, there is not a mechanism for the Board to track, or receive reporting data on any civil or criminal judgments against the licensee, unless reported by the licensed individual or a plaintiff to a court action. It was indicated to the Board, during the initial hearings of the Joint Committee in November, that consumers could be mislead into believing that this person is in "good standing," when in actuality there may be civil judgments or criminal actions filed against the contractor which are unreported to the Board. By warning the consumer of this fact, the Board has taken the appropriate action to deal with this issue.

**ISSUE #13. It is unclear why the expenditures for use of industry expert witnesses, to investigate the majority of licensee complaint investigations, has increased substantially, and whether this component of the enforcement program has helped the board effectively use enforcement resources.**

**Recommendation:** *Joint Committee recommends that the Board explain why expenditures in the expert witness/consultant program have increased so dramatically. This issue should be referred to the respective Budget Committees for review.*

**Comment:** Though the number of complaints received by the Board has not increased, the Board has experienced a growth in the number of experts used to investigate complaints. Expenditures for the use of industry experts reached \$1.3 million for 1995-96, an increase of 44 percent over 1992-93 expenditures of \$551,000. The Joint Committee is interested in assuring that this program is subject to appropriate controls and is consistent with a cost-effective enforcement program.